

MICHAEL A. FIRESTEIN, CA STATE BAR No. 110622 (*admitted pro hac vice*)

mfirestein@proskauer.com

JOSHUA J. POLLACK, CA STATE BAR No. 215922 (*admitted pro hac vice*)

jpollack@proskauer.com

PROSKAUER ROSE LLP

2049 Century Park East, 32nd Floor

Los Angeles, California 90067-3206

Telephone: (310) 557-2900

Facsimile: (310) 557-2193

JAMES E. MURPHY, NV STATE BAR No. 8586

jmurphy@laxalt-nomura.com

LAXALT & NOMURA, LTD.

6720 Via Austi Parkway, Suite 430

Las Vegas, Nevada 89169

Telephone: (702) 388-1551

Facsimile: (702) 388-1559

Attorneys for Plaintiff and Counter-Defendant
ANIPLEX, INCORPORATED

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANIPLEX, INCORPORATED, a Japanese
corporation,

Plaintiff and Counter-Defendant,

v.

THE UPPER DECK COMPANY, a Nevada
corporation,

Defendant and Counter-Claimant.

CASE NO. 2:08-cv-00442-HDM-PAL

**FIRST DECLARATION OF JOSHUA J. POLLACK IN SUPPORT OF PLAINTIFF AND
COUNTER-DEFENDANT ANIPLEX, INCORPORATED'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NON-CONFIDENTIAL)**

DECLARATION OF JOSHUA J. POLLACK

I, Joshua J. Pollack, declare as follows:

1. I am an attorney at law and an associate employed by Proskauer Rose LLP, counsel for Plaintiff and Counter-Defendant Aniplex, Incorporated (“Aniplex”) in this matter. I submit this declaration in support of Aniplex’s Motion for Partial Summary Judgment. I make this declaration of my own personal knowledge except where otherwise stated, and, if called upon to do so, I could and would testify competently to the matters set forth below.

2. Attached hereto as Exhibit 1 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Akira Shinohara, which was taken on February 5, 2009 (the “Shinohara Deposition”). I was present at the Shinohara Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Shinohara gave in response thereto.

3. Attached hereto as Exhibit 2 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Eiichi Kamagata, which was taken on May 20, 2009 (the “Kamagata Deposition”). I was present at the Kamagata Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Kamagata gave in response thereto.

4. Attached hereto as Exhibit 3 is a true and correct copy of cited excerpts from the certified transcript of the deposition of John Sepenuk, which was taken on January 26, 2010 (the “Sepenuk Deposition”). I was present at the Sepenuk Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Sepenuk gave in response thereto.

5. Attached hereto as Exhibit 4 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Asa Suehira-Weintraub, which was taken on February 11, 2010 (the “Suehira Deposition”). I was present at the Suehira Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Suehira-Weintraub gave in response thereto.

6. Attached hereto as Exhibit 5 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Jerry Bennington, which was taken on February 24, 2010 (the "Bennington Deposition"). I was present at the Bennington Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Bennington gave in response thereto.

7. Attached hereto as Exhibit 6 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Naritoshi Sato, which was taken on March 2 and 3, 2010 (the "Sato Deposition"). I was present at the Sato Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Sato gave in response thereto.

8. Attached hereto as Exhibit 7 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Cory Jones, which was taken on March 18, 2010 (the "Jones Deposition"). I was present at the Jones Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Jones gave in response thereto.

9. Attached hereto as Exhibit 8 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Shuko Yokoyama, which was taken on April 12 and 13, 2010 (the "Yokoyama Deposition"). I was present at the Yokoyama Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Ms. Yokoyama gave in response thereto.

10. Attached hereto as Exhibit 9 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Hideo Katsumata, which was taken on April 20 and 21, 2010 (the "Katsumata Deposition"). I was present at the Katsumata Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Katsumata gave in response thereto.

11. Attached hereto as Exhibit 10 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Kazuaki Ito, which was taken on April 21 and 22, 2010

(the "Ito Deposition"). I was present at the Ito Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Ito gave in response thereto.

12. Attached hereto as Exhibit 11 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Kenichi Oshima, which was taken on May 3, 4 and 5, 2010 (the "Oshima Deposition"). I was present at the Oshima Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Oshima gave in response thereto.

13. Attached hereto as Exhibit 12 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Keiko Nobuoka, which was taken on May 11 and 12, 2010 (the "Nobuoka Deposition"). I was present at the Nobuoka Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Ms. Nobuoka gave in response thereto.

14. Attached hereto as Exhibit 13 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Jun Tanaka, which was taken on May 25 and 26, 2010 (the "Tanaka Deposition"). I was present at the Tanaka Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Tanaka gave in response thereto.

15. Attached hereto as Exhibit 14 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Koichiro Natsume, which was taken on June 2 and 3, 2010 (the "Natsume Deposition"). I was present at the Natsume Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Natsume gave in response thereto.

16. Attached hereto as Exhibit 15 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Omeed Dariani, which was taken on June 17, 2010 (the "Dariani Deposition"). I was present at the Dariani Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Dariani gave in

response thereto.

17. Attached hereto as Exhibit 16 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Richard McWilliam, which was taken on June 23, 2010 (the "McWilliam Deposition"). I was present at the McWilliam Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. McWilliam gave in response thereto.

18. Attached hereto as Exhibit 17 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Yu Chih ("Alex") Yeh, which was taken on June 24, 2010 (the "Yeh Deposition"). I was present at the Yeh Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Yeh gave in response thereto.

19. Attached hereto as Exhibit 18 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Rajiv Gokhale, which was taken on June 30, 2010 (the "Gokhale Deposition"). I was present at the Gokhale Deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Gokhale gave in response thereto.

20. Attached hereto as Exhibit 19 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Masaki Kaifu, which was taken on July 6 and 7, 2010 (the "Kaifu Deposition"). I am informed and believe that the attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Kaifu gave in response thereto.

21. Attached hereto as Exhibit 20 is a true and correct copy of cited excerpts from the certified transcript of the deposition of Marvin Gleicher, which was taken on July 9, 2010 (the "Gleicher Deposition"). I was present at the Gleicher deposition. The attached excerpts from this deposition accurately reflect the questions asked and the answers that Mr. Gleicher gave in response thereto.

22. Attached hereto as Exhibit 21 is a true and correct copy of Hiroyuki Miwa's Supplemental Responses to Deposition on Written Questions, dated July 29, 2010. Pursuant to

the Stipulated Order Regarding Use of Hiroyuki Miwa's Responses and Supplemental Responses to Deposition on Written Questions, filed July 30, 2010 (Dkt. #114), Mr. Miwa's Supplemental Responses may be used in connection with motions for summary judgment or summary adjudication in this case.

23. Attached hereto as Exhibit 22 is a true and correct copy of Kiba meeting notes, dated June 1, 2005, and Bates-stamped UD007584-7589. The document was marked at the Bennington Deposition as Exhibit 20 and authenticated at the Dariani Deposition (see Exhibit 15 at 152:7-23).

24. Attached hereto as Exhibit 23 is a true and correct copy of an e-mail thread between Cory Jones, John Sepenuk and others, dated March 1, 2005, and Bates-stamped UD043717-43719. The document was marked at the Jones Deposition as Exhibit 206 and authenticated at the Jones Deposition (see Exhibit 7 at 163:14-164:3, 164:17-20).

25. Attached hereto as Exhibit 24 is a true and correct copy of an e-mail thread between Cory Jones, Masaru Ijichi and others, dated March 15, 2005, and Bates-stamped UD043654-43655. The document was marked at the Jones Deposition as Exhibit 207 and authenticated at the Jones Deposition (see Exhibit 7 at 170:5-18).

26. Attached hereto as Exhibit 25 is a true and correct copy of an e-mail thread between Kenichi Oshima, Akio Sugaya, John Sepenuk and others, dated October 14, 2005, and Bates-stamped UD023822-23823. The document was marked at the Oshima Deposition as Exhibit 228 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 122:18-123:4).

27. Attached hereto as Exhibit 26 is a true and correct copy of an e-mail thread between Cory Jones and various Upper Deck personnel, dated August 13, 2004, and Bates-stamped UD043658-043659. The document was marked at the Jones Deposition as Exhibit 202 and authenticated at the Jones Deposition (see Exhibit 7 at 62:6-63:10).

28. Attached hereto as Exhibit 27 is a true and correct copy of an e-mail thread between Jerry Bennington, David Hoppe and others, dated January 27, 2005, and Bates-stamped UD106037-106041. The document was marked at the Bennington Deposition as Exhibit 14 and

authenticated at the Bennington Deposition (see Exhibit 5 at 115:7-16).

29. Attached hereto as Exhibit 28 is a true and correct copy of an e-mail thread between John Sepenuk, Jerry Bennington, David Hoppe and others, dated February 1, 2005, and Bates-stamped UD037861-037867. The document was marked at the Bennington Deposition as Exhibit 15 and authenticated at the Bennington Deposition (see Exhibit 5 at 120:15-121:5).

30. Attached hereto as Exhibit 29 is a true and correct copy of an e-mail thread between Omeed Dariani, John Sepenuk and others, dated June 6, 2005, and Bates-stamped UD019395-019393. The document was marked at the Bennington Deposition as Exhibit 19 and authenticated at the Bennington Deposition (see Exhibit 5 at 151:3-13).

31. Attached hereto as Exhibit 30 is a true and correct copy of an e-mail thread between Soichiro "Swimmy" Minami, John Sepenuk, Jerry Bennington and others, dated July 24, 2005, and Bates-stamped UD058324-58326. The document was marked at the Sepenuk Deposition as Exhibit 8 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 175:16-176:7, 122:18-123:4).

32. Attached hereto as Exhibit 31 is a true and correct copy of an e-mail thread between Soichiro "Swimmy" Minami, John Sepenuk and others, dated September 8, 2005, and Bates-stamped UD020810-20813. The document was marked at the Sepenuk Deposition as Exhibit 10 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 186:10-12, 122:18-123:4).

33. Attached hereto as Exhibit 32 is a true and correct copy of an e-mail thread between Jeff Donais, Jerry Bennington and others, dated February 8, 2006, and Bates-stamped UD069851-69854. The document was marked at the Bennington Deposition as Exhibit 32 and authenticated at the Bennington Deposition (see Exhibit 5 at 216:23-217:14).

34. Attached hereto as Exhibit 33 is a true and correct copy of an e-mail thread between Cory Jones, Kenichi Oshima and others, dated February 22, 2006, and Bates-stamped UD071600-71602. The document was marked at the Jones Deposition as Exhibit 213 and authenticated at the Jones Deposition (see Exhibit 7 at 294:8-18).

35. Attached hereto as Exhibit 34 is a true and correct copy of an e-mail thread between John Sepenuk, Jeff Donais and others, dated March 12, 2006, and Bates-stamped UD055165-55168. The document was marked at the Sepenuk Deposition as Exhibit 20 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 247:1-13).

36. Attached hereto as Exhibit 35 is a true and correct copy of an e-mail thread between John Sepenuk, Jerry Bennington and others, dated May 23, 2006, and Bates-stamped UD050775-50778. The document was marked at the Bennington Deposition as Exhibit 42 and authenticated at the Bennington Deposition (see Exhibit 5 at 264:6-17).

37. Attached hereto as Exhibit 36 is a true and correct copy of an e-mail from John Sepenuk to Asa Suehira, dated April 28, 2006, and Bates-stamped UD049788. The document was marked at the Sepenuk Deposition as Exhibit 23 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 260:1-6).

38. Attached hereto as Exhibit 37 is a true and correct copy of a PowerPoint presentation, dated April 27, 2006, and Bates-stamped ANX008678-8696. The document was marked at the Bennington Deposition as Exhibit 46 and at the Sepenuk Deposition as Exhibit 26, and authenticated at the Bennington Deposition (see Exhibit 5 at 278:2-18) and at the Sepenuk Deposition (see Exhibit 3 at 267:23-269:7).

39. Attached hereto as Exhibit 38 is a true and correct copy of a table entitled "Summary of Out-of-Pocket Damage to Upper Deck." The document was marked at the McWilliam Deposition as Exhibit 311 and is Exhibit C to the Expert Report of Rajiv Gokhale (one of Upper Deck's proffered experts) dated April 26, 2010. Mr. Gokhale's Expert Report was marked at the June 28, 2010 Deposition of Thomas Neches as Exhibit 181 and authenticated at the Gokhale Deposition (see Exhibit 18 at 49:24-50:4, 69:21-23).

40. Attached hereto as Exhibit 39 is a true and correct copy of an e-mail thread between Richard McWilliam, John Sepenuk and others, dated November 7, 2006, and Bates-stamped UD033985-33987. The document was marked at the Sepenuk Deposition as Exhibit 38 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 305:1-15, 122:18-123:4).

41. Attached hereto as Exhibit 40 is a true and correct copy of an e-mail thread between Kenichi Oshima, John Sepenuk and others, dated November 8, 2006, and Bates-stamped UD026560-26561. The document was marked at the Sepenuk Deposition as Exhibit 39 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 306:16-22, 122:18-123:4).

42. Attached hereto as Exhibit 41 is a true and correct copy of an e-mail thread between Kenichi Oshima, Jun Tanaka and others, dated December 22, 2006, and Bates-stamped ANX012972-12975 (with certified English translation). The document was marked at the Oshima Deposition as Exhibit 238 and authenticated at the Oshima Deposition (see Exhibit 11 at 277:11-279:5).

43. Attached hereto as Exhibit 42 is a true and correct copy of an e-mail thread between Yuko Hiroi, Gina Williams, John Sepenuk, and others, dated November 15, 2006, and Bates-stamped UD065159. The document was authenticated at the Sepenuk Deposition (see Exhibit 3 at 122:18-123:4).

44. Attached hereto as Exhibit 43 is a true and correct copy of an e-mail thread between Yuko Hiroi, Gina Williams, John Sepenuk and others, dated December 12, 2006, and Bates-stamped UD036683. The document was authenticated at the Sepenuk Deposition (see Exhibit 3 at 122:18-123:4).

45. Attached hereto as Exhibit 44 is a true and correct copy of an e-mail thread between Kenichi Oshima and John Sepenuk, dated April 20, 2007, and Bates-stamped UD107422-107425 (with certified English translation). The document was marked at the Sepenuk Deposition as Exhibit 41 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 310:24-311:17, 122:18-123:4).

46. Attached hereto as Exhibit 45 is a true and correct copy of an e-mail thread between Kenichi Oshima, John Sepenuk and others, dated August 16, 2006, and Bates-stamped UD092626-92630. The document was marked at the Sepenuk Deposition as Exhibit 30 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 279:24-280:5, 122:18-123:4).

47. Attached hereto as Exhibit 46 is a true and correct copy of an e-mail thread

between John Sepenuk, Jun Tanaka and others, dated January 11, 2007, and Bates-stamped ANX013236-13237. The document was marked at the Sepenuk Deposition as Exhibit 37 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 303:2-17, 122:18-123:4).

48. Attached hereto as Exhibit 47 is a true and correct copy of an e-mail between Keiko Nobuoka, Masuo Ueda and others, dated December 11, 2007, and Bates-stamped ANX014594 (with certified English translation). The document was marked at the Nobuoka Deposition as Exhibit 144 and authenticated at the Nobuoka Deposition (see Exhibit 12 at 221:19-222:6).

49. Attached hereto as Exhibit 48 is a true and correct copy of an e-mail from Kenichi Oshima to John Sepenuk, dated December 18, 2006, and Bates-stamped UD019174-19175. The document was marked at the Oshima Deposition as Exhibit 237 and authenticated at the Oshima Deposition (see Exhibit 11 at 273:18-274:5).

50. Attached hereto as Exhibit 49 is a true and correct copy of an e-mail thread between John Sepenuk, Jerry Bennington and others, dated October 18, 2005, and Bates-stamped UD064750-64752. The document was marked at the Sepenuk Deposition as Exhibit 14 and authenticated at the Sepenuk Deposition (see Exhibit 3 at 202:7-20, 122:18-123:4).

51. Attached hereto as Exhibit 50 is a true and correct copy of the "Kiba" Short Form Agreement, dated December 10, 2005, and Bates-stamped UD003597-3610. The document was marked at the Bennington Deposition as Exhibit 28 and authenticated at the Bennington Deposition (see Exhibit 5 at 189:12-25).

52. Attached hereto as Exhibit 51 is a true and correct copy of a PowerPoint Presentation titled "Kiba Creative Meeting," dated April 27, 2006, and Bates-stamped UD007790-7836. The document was marked at the Bennington Deposition as Exhibit 41 and at the Sepenuk Deposition as Exhibit 22, and authenticated at the Bennington Deposition (see Exhibit 5 at 255:4-256:15) and at the Sepenuk Deposition (see Exhibit 3 at 252:15-21).

53. Attached hereto as Exhibit 52 is a true and correct copy of an e-mail and attachments from Lisa Yamatoya to Swimmy Minami, John Sepenuk and others, dated February

2, 2005, and Bates-stamped UD020087-20090. The document was marked at the Bennington Deposition as Exhibit 16 and authenticated at the Bennington Deposition (see Exhibit 5 at 125:22-126:6).

54. Attached hereto as Exhibit 53 is a true and correct copy of a letter from Jun Tanaka to Upper Deck, dated August 4, 2006, and Bates-stamped ANX012439-12443. The document was marked at the Tanaka Deposition as Exhibit 151 and authenticated at the Tanaka Deposition (see Exhibit 13 at 87:20-88:17).

55. Attached hereto as Exhibit 54 is a true and correct copy of an e-mail and attachment from Steve Kalt to Jun Tanaka, Asa Suehira and John Sepenuk, dated August 17, 2006, and Bates-stamped ANX012583-12585. The document was marked at the Tanaka Deposition as Exhibit 152 and authenticated at the Tanaka Deposition (see Exhibit 13 at 90:14-91:11).

56. Attached hereto as Exhibit 55 is a true and correct copy of a letter from Jun Tanaka to Upper Deck, dated August 24, 2006, and Bates-stamped ANX012706-12710. The document was marked at the Tanaka Deposition as Exhibit 153 and authenticated at the Tanaka Deposition (see Exhibit 13 at 101:5-22).

57. Attached hereto as Exhibit 56 is a true and correct copy of a letter from Jun Tanaka to Upper Deck, dated January 26, 2007, and Bates-stamped ANX013432-13433. The document was marked at the Tanaka Deposition as Exhibit 155 and authenticated at the Tanaka Deposition (see Exhibit 13 at 115:8-24).

58. Attached hereto as Exhibit 57 is a true and correct copy of an e-mail thread between John Sepenuk, Jerry Bennington and others, dated August 2, 2005, and Bates-stamped UD062509-62512. The document was marked at the Bennington Deposition as Exhibit 24 and authenticated at the Bennington Deposition (see Exhibit 5 at 171:17-172:4).

59. Attached hereto as Exhibit 58 is a true and correct copy of Plaintiff and Counter-Defendant Aniplex Incorporated's Initial Disclosures Pursuant to Federal Rule of Civil Procedure 26(A)(1). The document was marked at the Suehira Deposition as Exhibit 36 and the

chart on page 7 was authenticated at the Suehira Deposition (see Exhibit 4 at 212:6-213:1).

60. Attached hereto as Exhibit 59 is a chart I assisted in preparing, which summarizes the key differences between the Short Form and the A&R Short Form.


61. Attached hereto as Exhibit 60 is a true and correct copy of an e-mail thread between John Sepenuk, Jerry Bennington and others, dated February 23, 2006, and Bates-stamped UD050822-50823. The document was marked at the Bennington Deposition as Exhibit 34 and authenticated at the Bennington Deposition (see Exhibit 5 at 234:10-235:5).

62. Attached hereto as Exhibit 61 is a true and correct copy of an e-mail from Jun Tanaka to Koichiro Natsume and others, dated September 28, 2006, and Bates-stamped ANX012796-12797 (with certified English translation). The document was marked at the Katsumata Deposition as Exhibit 89 and authenticated at the Katsumata Deposition (see Exhibit 9 at 161:13-22).

63. Attached hereto as Exhibit 62 is a true and correct copy of an Agreement of Commissioning Production Services between Aniplex and Madhouse, dated January 1, 2005, and Bates-stamped ANX030029-30036 (with certified English translation). The document was marked at the Suehira Deposition as Exhibit 2 and authenticated at the Katsumata Deposition (see Exhibit 9 at 59:16-18).

64. Attached hereto as Exhibit 63 is a chart that I prepared summarizing the names and employment affiliations of each of the deponents whose testimony is attached hereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I executed this declaration this 6th day of August, 2010 in Los Angeles, California.


Joshua J. Pollack

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5, I hereby certify that I am a member of Proskauer Rose LLP, and that I caused a true and correct copy of the foregoing **FIRST DECLARATION OF JOSHUA J. POLLACK IN SUPPORT OF PLAINTIFF AND COUNTER-DEFENDANT ANIPLEX, INCORPORATED'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NON-CONFIDENTIAL)** to be served on the parties in this action through the Federal Court CM/ECF system.

DATED this 6th day of August, 2010

/s/ Joshua J. Pollack

An associate with Proskauer Rose LLP, *admitted pro hac vice*